SUBCHAPTER B : NEW SOURCE REVIEW PERMITS
§§116.110-116.112, 116.114-116.118, 116.120-116.126, 116.130-116.134, 116.136, 116.137, 116.140, 116.141, 116.143, 116.150, 116.151, 116.160-116.163, 116.170, 116.174, and 116.175
Effective May 15, 1997

PERMIT APPLICATION

§116.110. Applicability.

(a) Permit to construct. Any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this state shall obtain a permit pursuant to §116.111 of this title (relating to General Applications), satisfy the conditions for a standard permit pursuant to the requirements in Subchapter F of this chapter (relating to Standard Permits), satisfy the conditions for a flexible permit pursuant to the requirements in Subchapter G of this chapter (relating to Flexible Permits), or satisfy the conditions for exempt facilities pursuant to Subchapter C of this chapter (relating to Permit Exemptions) before any actual work is begun on the facility. Modifications to existing permitted facilities may be handled through the amendment of an existing permit or an existing flexible permit.

(b) Operations certification.

(1) To ensure that operations addressed in the applicant's permit are in conformance with the representations in the permit application, any person who has applied for and received a permit from the Texas Natural Resource Conservation Commission (TNRCC) shall:

(A) submit the first part of the operations certification before commencing operations certifying that, to the best of the knowledge of an individual with process knowledge in a managerial capacity signing the certification, the facilities or changes authorized by the permit have been accomplished as represented, if those representations affect emissions, method of control, or character of emissions;

(B) submit a second certification certifying that, to the best of the knowledge of an individual with process knowledge in a managerial capacity signing the certification, the facility complies with all terms of the preconstruction permit and that operations of the facility are in compliance with the Texas Clean Air Act and the rules of the TNRCC. This certification shall be submitted simultaneously with any report of testing or monitoring results required by the permit or, if no testing or monitoring is required, within 60 days of the commencement of operation. The certification deadline may be extended by the executive director upon a showing of good cause by the permit holder; the request for extension must be filed prior to the certification deadline.

(2) Multiple operations certifications may be submitted on a facility-by-facility basis for a given permit.

(3) All permits issued after the effective date of this subsection are subject to the provisions of this subsection.

(c) Change in ownership.

(1) The new owner of a facility which previously has received a permit or special permit from the TNRCC shall not be required to apply for a new permit or special permit, and the change of ownership shall not be subject to the public notification requirements of this chapter, provided that within 30 days after the change of ownership the new owner notifies the TNRCC of the change. The notification shall include a certification of each of the following:

(A) the ownership change has occurred and the new owner agrees to be bound by all conditions of the permit or special permit and all representations made in the application for permit or special permit and any amendments to the permit;

(B) there will be no change in the type of pollutants emitted;

(C) there will be no increase in the quantity of pollutants emitted.

(2) The new owner of the facility is required to comply with all conditions of the permit or special permit and all representations made in the application for permit or special permit and any amendments to the permit.

(d) Submittal under seal of registered professional engineer. All applications for permit or permit amendment with an estimated capital cost of the project above $2 million, and not subject to any exemption contained in the Texas Engineering Practice Act (TEPA), shall be submitted under seal of a registered professional engineer. However, nothing in this subsection shall limit or affect any requirement which may apply to the practice of engineering under the TEPA or the actions of the Texas State Board of Registration for Professional Engineers. For purposes of this subsection, the estimated capital cost is defined in §116.141 of this title (relating to Permit Fees).

(e) Responsibility for permit application. The owner of the facility or the operator of the facility authorized to act for the owner is responsible for complying with this section.

Adopted November 16, 1994 Effective December 8, 1994

§116.111. General Application.

Any application for a new permit, permit amendment, or special permit amendment must include a completed Form PI-1 General Application. The Form PI-1 must be signed by an authorized representative of the applicant. The Form PI-1 specifies additional support information which must be provided before the application is deemed complete. In order to be granted a permit, permit amendment, or special permit amendment, the owner or operator of the proposed facility shall submit information to the Texas Natural Resource Conservation Commission (TNRCC) which shall demonstrate that all of the following are met.

(1) Protection of public health and welfare. The emissions from the proposed facility will comply with all rules and regulations of the TNRCC and with the intent of the Texas Clean Air Act, including protection of the health and physical property of the people. In considering the issuance of a permit for construction or modification of any facility within 3,000 feet or less of an elementary, junior high/middle, or senior high school, the TNRCC shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending these school facilities.

(2) Measurement of emissions. The proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the TNRCC "Compliance Sampling Manual."

(3) Best Available Control Technology (BACT). The proposed facility will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

(4) Federal New Source Performance Standards (NSPS). The emissions from the proposed facility will meet at least the requirements of any applicable NSPS as listed under Title 40 Code of Federal Regulations (CFR) Part 60, promulgated by the United States Environmental Protection Agency (EPA) pursuant to authority granted under the Federal Clean Air Act (FCAA), §111, as amended.

(5) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from the proposed facility will meet at least the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by EPA pursuant to authority granted under the FCAA, §112, as amended.

(6) Performance demonstration. The proposed facility will achieve the performance specified in the permit application. The applicant may be required to submit additional engineering data after a permit has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the permit application. In addition, dispersion modeling, monitoring, or stack testing may be required.

(7) Nonattainment review. If the proposed facility is located in a nonattainment area, it shall comply with all applicable requirements under the undesignated head concerning nonattainment review.

(8) Prevention of Significant Deterioration (PSD) review. If the proposed facility is located in an attainment area, it shall comply with all applicable requirements under the undesignated head concerning PSD.

(9) Air dispersion modeling. Computerized air dispersion modeling may be required by the TNRCC Permits Program to determine the air quality impacts from a proposed new facility or source modification.

§116.112. Distance Limitations.

(a) Lead smelters. Pursuant to the Texas Clean Air Act, §382.053, a permit shall not be issued for a new lead smelting plant at a site located within 3,000 feet of the residence of any individual and at which lead smelting operations have not been conducted before August 31, 1987. This subsection does not apply to a modification of a lead smelting plant in operation on or before August 31, 1987, to a new lead smelting plant or modification of a plant with the capacity to produce not more than 200 pounds of lead per hour, or to a lead smelting plant that was located more than 3,000 feet from the nearest residence when the plant began operations.

(b) Hazardous waste permits. Permits for hazardous waste management facilities shall not be issued if the facility is to be located in the vicinity of specified public access areas under the following circumstances.

(1) No permit shall be issued for a new hazardous waste landfill or land treatment facility or an areal expansion of an existing facility if the boundary of the facility or expansion is to be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(2) No permit shall be issued for a new commercial hazardous waste management facility or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within ½ mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(3) For a subsequent areal expansion of a new commercial hazardous waste management facility that is required to comply with paragraph (2) of this subsection, distances shall be measured from a residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(4) No permit shall be issued for a new commercial hazardous waste management facility that is proposed to be located within ½ mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park, at any distance beyond the facility's property boundaries, unless the applicant demonstrates that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment.

(5) The measurement of distances required by paragraphs (1) - (4) of this subsection shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park that is in use when the permit application is filed with the Texas Natural Resource Conservation Commission. The restrictions imposed by paragraphs (1) - (4) of this subsection do not apply to a residence, church, school, day care center, surface water body used for a public drinking water supply, a dedicated public park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(6) The measurement of distances required by paragraphs (1) - (4) of this subsection shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be no more than 75 feet from the edge of the proposed hazardous waste management unit.

Adopted February 14, 1996 Effective March 7, 1996

§116.114. Application Review Schedule.

(a) Review schedule. The permit application will be reviewed by the Texas Natural Resource Conservation Commission in accordance with the following schedule.

(1) Within 90 days of receipt of an application for a new permit, or amendment to a permit or special permit, the executive director shall mail written notification informing the applicant that the application is complete or that it is deficient. If the application is deficient, the notification shall state any additional information required, and the intent of the executive director to void the application if information for a complete application is not submitted. Additional information may be requested within 60 days of receipt of the information provided in response to the deficiency notification.

(2) Within 180 days of receipt of a completed permit application, or 150 days of receipt of a permit amendment or special permit amendment, the executive director shall mail written notice informing the applicant of his decision to approve or not approve the application provided that no requests for public hearing or public meeting on the proposed facility have been received and the applicant has provided public notification as required by the executive director.

(3) If the time limits provided in this section to process an application are exceeded, the applicant may appeal in writing to the executive director. If the executive director finds that the application was not approved or denied within the specified period and that the agency exceeded that period without good cause, as provided in Texas Civil Statutes, Article 6252-13b.1, §3, the executive director shall reimburse the permit fee which was remitted with the application.

(b) Voiding of deficient application. An applicant shall make a good faith effort to submit, in a timely manner, adequate information which demonstrates that the requirements for obtaining a permit or permit amendment are met in response to any deficiency notification issued by the executive director pursuant to the provisions of this section, or §116.131 of this title (relating to Public Notification Requirements). If an applicant fails to make such good faith effort, the executive director shall void the application and notify the applicant. If the application is resubmitted within six months of the voidance, it shall be exempt from the requirements of §116.140 of this title (relating to Permit Fee Applicability).

Adopted August 16, 1993 Effective September 13, 1993

§116.115. General and Special Conditions.

(a) Permits, special permits, standard permits, and exemptions may contain general and special conditions. The holders of permits, special permits, standard permits, and exemptions shall comply with any

and all such conditions. Upon a specific finding by the executive director that an increase of a particular pollutant could result in a significant impact on the air environment, or could cause the facility to become subject to review under the undesignated headings of this subchapter relating to Nonattainment Review or Prevention of Significant Deterioration Review, the permit may include a special condition which states that the permittee must obtain written approval from the executive director before constructing a source under a standard exemption or standard permit.

(b) Holders of permits issued or amended prior to August 16, 1994, shall comply with the general conditions attached to the permit. For permits issued or amended after August 16, 1994, the following general conditions shall be applicable, but may not be specifically stated within the permit document.

(1) Voiding of permit. A permit or permit amendment under this chapter is automatically void if the holder fails to begin construction within 18 months of date of issuance, discontinues construction for more than 18 consecutive months prior to completion, or fails to complete construction within a reasonable time. Upon request, the executive director may grant a one time 18-month extension of the date to begin construction.

(2) Construction progress. Start of construction, construction interruptions exceeding 45 days, and completion of construction shall be reported to the appropriate regional office of the Texas Natural Resource Conservation Commission (TNRCC or commission) not later than 15 working days after occurrence of the event.

(3) Start-up notification. The appropriate Air Program regional office of the commission shall be notified prior to the commencement of operations of the facilities authorized by the permit in such a manner that a representative of the TNRCC may be present. Phased construction, which may involve a series of units commencing operations at different times, shall provide separate notification for the commencement of operations for each unit.

(4) Sampling requirements. If sampling of stacks or process vents is required, the permit holder shall contact the TNRCC Office of Air Quality prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission. The permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(5) Equivalency of methods. It shall be the responsibility of the permit holder to demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the permit.

(6) Recordkeeping. A copy of the permit along with information and data sufficient to demonstrate compliance with the permit shall be maintained in a file at the plant site and made available at the request of personnel from the TNRCC or any air pollution control program having jurisdiction. For

facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the permit holder in the permit application. This information shall include, but is not limited to, production records and operating hours. Additional recordkeeping requirements may be specified in special conditions attached to the permit. Information in the file shall be retained for at least two years following the date that the information or data is obtained.

(7) Maximum allowable emission rates. The total emissions of air contaminants from any of the sources of emissions listed in the table entitled "Emission Sources - Maximum Allowable Emission Rates" shall not exceed the values stated on the table attached to the permit.

(8) Maintenance of emission control. The facilities covered by the permit shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for upsets and maintenance shall be made in accordance with §101.6 and §101.7 of this title (relating to Notification Requirements for Major Upset and Notification Requirements for Maintenance).

(9) Compliance with rules. Acceptance of a permit by a permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the commission issued in conformity with the Texas Clean Air Act and the conditions precedent to the granting of the permit. If more than one state or federal rule or regulation or permit condition are applicable, then the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated. Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit.

(c) There may be additional special conditions attached to a permit upon issuance or modification of the permit. Such conditions in a permit may be more restrictive than the requirements of Title 30 of the Texas Administrative Code.

Adopted August 2, 1994 Effective August 16, 1994

§116.116. Changes to Facilities.

(a) Representations and conditions. All representations with regard to construction plans and operation procedures in an application for a permit, special permit, or special exemption, as well as any general and special conditions attached to the permit, special permit, or special exemption itself, become conditions upon which the subsequent permit, special permit, or special exemption are issued.

(b) Permit amendments. Except as provided in subsection (e) of this section, it shall be unlawful for any person to vary from any representation or permit condition if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless application is made to the executive director to amend the permit or special permit in that regard and such amendment is approved by the executive director or the Texas Natural Resource Conservation Commission (TNRCC). Applications to amend a permit or special permit shall be

submitted with a completed Form PI-1 and are subject to the requirements of §116.111 of this title (relating to General Application).

(c) Permit alterations.

(1) A permit alteration is:

(A) any change from a representation in a permit application that does not involve an increase in emission rates or a change in the character or method of control of emissions; or

(B) any change in a general or special condition of a permit that does not involve an increase in emission rates or a change in the character or method of control of emissions;

(C) a decrease in allowable emissions.

(2) All requests for permit alterations which may result in an increase in off-property concentrations of air contaminants, involve a change in permit conditions, or affect facility or control equipment performance must receive prior approval by the executive director. The executive director shall be notified in writing of all other permit alterations. Any request for permit alteration shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.111(3) of this title.

(3) Permit alterations shall not be subject to the requirements of Best Available Control Technology identified in §116.111(3) of this title.

(d) Standard exemption in lieu of permit amendment or alteration. Notwithstanding subsections (b) or (c) of this section, no permit amendment or alteration is required if the changes to the permitted facility qualify for an exemption under Subchapter C of this chapter (relating to Permit Exemptions) unless prohibited by permit condition as provided in §116.115 of this title (relating to Special Conditions). All such exempted changes to a permitted facility shall be incorporated into that facility's permit at such time as the permit is amended or renewed.

(e) Changes to qualified facilities. Notwithstanding any other subsection of this section, a physical or operational change may be made to a qualified facility if the change does not result in a net increase in allowable emissions of any air contaminant and does not result in the emission of any air contaminant not previously emitted.

(1) In determining whether a change to a qualified facility results in a net increase in allowable emissions or the emission of any air contaminant not previously emitted, the effect on emissions of the following shall be considered:

(A) any air pollution control method applied to the qualified facility;

(B) any decreases in allowable emissions from other qualified facilities at the same TNRCC air quality account number that have received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur; and

(C) any decrease in actual emissions from other qualified facilities at the same TNRCC air quality account number that are not included in subparagraph (B) of this paragraph.

(2) The determination of whether a physical or operational change would result in a net increase in allowable emissions of any air contaminant or the emission of any air contaminant not previously emitted shall be based on the allowable emissions for air contaminant categories and any allowable emissions for individual compounds. If a physical or operational change would result in emissions of an air contaminant category or compound above the allowable emissions for that air contaminant category or compound, the amount above the allowable emissions must be offset by an equivalent decrease in emissions at the same facility or a different facility. In making this offset, the following subparagraphs apply.

(A) The offset shall be based on the same time periods (e.g., hourly and annual rates) as the allowable emissions for the facility at which the change will occur.

(B) Emissions of different compounds within the same air contaminant category may be interchanged.

(C) For allowable emissions for individual compounds, any interchange shall adjust the emission rates for the different compounds in accordance with the ratio of the effects screening levels of the compounds.

(D) For allowable emissions for air contaminant categories, interchanges shall use the unadjusted emission rates for the different compounds.

(E) The effects screening level shall be determined by the executive director of the TNRCC.

(F) An air contaminant category is a group of related compounds, such as volatile organic compounds, particulate matter, nitrogen oxides, and sulfur compounds.

(3) Persons making changes to qualified facilities under this subsection shall comply with the applicable requirements of §116.117 of this title (relating to Notification of Changes to Qualified Facilities) and §116.118 of this title (relating to Pre-change Qualification).

(4) As used in this subsection, the term “physical and operational changes” does not include:

(A) construction of a new facility; or

(B) changes to procedures regarding monitoring, determination of emissions and recordkeeping that are required by a permit.

(5) If additional air pollution control methods are implemented for the purpose of making a facility a qualified facility, such additional control methods shall be at least as effective as Best Available Control Technology (BACT) required at the time the additional control methods are implemented. If additional control methods are implemented that are not at least as effective as such BACT, the facility may be determined to be a qualified facility only if the owner or operator can demonstrate that the control methods were implemented to comply with a law, rule, order, permit, or can demonstrate that the control method was implemented to resolve a documented citizen compliant. The implementation of any additional control methods shall be subject to the requirements of this chapter.

(6) For purposes of this subsection and §116.117 of this title (relating to Documentation and Notification of Changes to Qualified Facilities), the consideration of decreases in allowable and actual emissions from other qualified facilities in accordance with paragraph (1) of this subsection shall be referred to as intraplant trading. The decreases in allowable and actual emissions shall be based on emission rates for the same time periods (e.g., hourly and annual rates) as the allowable emissions for the facility at which the change will occur and for which an intraplant trade is desired. Actual emissions shall be based on data that is representative of the emissions actually achieved from a facility during the relevant time period (e.g., hourly or annual rate). The allowable emissions from facilities that were never constructed shall not be use in intraplant trading.

(7) The existing level of control may not be lessened for a qualified facility.

Adopted February 14, 1996 Effective March 3, 1996

§116.117. Documentation and Notification of Changes to Qualified Facilities.

(a) Persons making physical or operational changes to qualified facilities under the provisions of §116.116(e) of this title (relating to Changes to Facilities) shall maintain documentation at the plant site demonstrating that the changes satisfy the requirements of that section. If the plant site is unmanned, the regional manager may authorize an alternative site to maintain this documentation. This documentation shall include quantification of all emission increases and decreases associated with the physical or operational change, a description of the physical or operational change, a description of any equipment being installed, and sufficient information as may be necessary to demonstrate that the project will comply with the Federal Clean Air Act, Title 1, Parts C and D. This documentation shall be made available to representatives of the Texas Natural Resource Conservation Commission (TNRCC) upon request.

(b) In addition to the documentation requirements under subsection (a) of this section, persons making such changes to qualified facilities shall comply with the following notification requirements.

(1) Annual report. For changes to qualified facilities for which there is no intraplant trading in accordance with §116.116(e)(1) of this title, an annual report shall be submitted to the appropriate TNRCC regional office by August 1 of each year which shall include all changes made under §116.116(e)

during the immediately preceding annual period July 1 - June 30. Changes for which notification has been previously submitted by PI-E form to TNRCC under paragraphs (2) or (3) of this subsection or which have been incorporated into the permit for the facility need not be included in the annual report. The annual report shall contain a PI-E form for each change. The annual reporting period for a TNRCC air quality account and the due date of the annual report may be changed with the agreement of the TNRCC regional office.

(2) Post-change notification. For changes to qualified facilities for which there is intraplant trading below the reportable limit, notification of the change shall be submitted on a PI-E form to the New Source Review Division of the TNRCC within 30 days after the change occurs.

(3) Pre-change notification. For changes to qualified facilities for which there is intraplant trading above the reportable limit, notification of the change shall be submitted on a PI-E form to the New Source Review Division of the TNRCC before the change may occur. The change may occur after the receipt of written notification from the TNRCC that there are no objections, or 45 days after the notification is received by the TNRCC, whichever occurs first.

(4) Reportable limit. The executive director shall establish reportable limits as follows:

(A) an emission rate that is adjusted based on a factor that accounts for a ratio of the effects screening levels of the different compounds and the difference in location of emissions involved in an intraplant trade; or

(B) an emission rate that results in a sum total of modeled ground level concentration for the account that shall not exceed two times the effects screening level.

(c) For facilities that have received a preconstruction permit, all changes for which the notification procedure of subsection (b) of this section has been used shall be incorporated into the permit at such time as the permit is amended or renewed.

(d) If a physical or operational change at a qualified facility will affect compliance with a permit special condition, notice shall be made to the TNRCC prior to the change. The notice shall identify the affected special condition and indicate the change needed or the desire to remove the special condition from the permit. The permit holder is relieved from complying with the permit special condition upon the filing of the notice provided the change complies with §116.116(e) of this title.

(e) Nothing in this section shall limit the applicability of any federal requirement.

Adopted February 14, 1996 Effective March 7, 1996

§116.118. Pre-change Qualification.

(a) If either of the following conditions exists, it will be necessary to establish that a facility is a qualified facility before a physical or operational change may be made under the notification procedure of §116.117 of this title (relating to Documentation and Notification of Changes to Qualified Facilities):

(1) the facility is a qualified facility on the basis of Best Available Control Technology and the requirement for the facility type has not been previously established by the executive director of the TNRCC;

(2) the facility does not have allowable emissions established for an air contaminant relevant to the change in a maximum allowable emissions rate table, PI-8 form or PI-E form.

(b) The pre-change qualification shall be made by submitting a PI-E form to the New Source Review Division. The facility shall be qualified in accordance with the information contained in the PI-E form after receipt of written notification from the TNRCC that there are no objections, or 45 days after the PI-E form is received by TNRCC, whichever occurs first. The pre-change qualification may be submitted at the same time as a pre-change notification under §116.117(b) of this title or at any other time prior to making a change to a qualified facility.

Adopted February 14, 1996 Effective March 7, 1996

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

COMPLIANCE HISTORY

§116.120. Applicability.

(a) Except as provided in §116.121 of this title (relating to Exemptions) as part of its construction permit review, or the review of an amendment, or renewal of an existing permit, the Texas Natural Resource Conservation Commission (TNRCC) shall compile the following information:

(1) for a new facility at an existing site or for an amendment or renewal of an existing permit, the compliance history for the existing site;

(2) for a new facility at a new site, compliance history on similar facilities, if any, owned or operated by the applicant in Texas. The TNRCC may require the applicant to indicate which facilities the applicant considers to be similar.

(b) For a facility at a new site, if the applicant does not own or operate a similar facility in Texas, the applicant shall provide the TNRCC with a compliance history for similar facilities owned or operated by the applicant in other states.

Adopted August 16, 1993 Effective September 13, 1993

§116.121. Exemptions.

The Texas Natural Resource Conservation Commission shall not be required to compile a compliance history where the total increased actual emissions of any specific contaminant (specific substance, e.g. benzene, arsenic, etc.) from the facility or site will be accompanied by greater than a 1.1 to 1 reduction of the same specific air contaminant (specific substance, e.g., benzene, arsenic, etc.) from the facility or site.

Adopted August 16, 1993 Effective September 13, 1993

§116.122. Contents of Compliance History.

(a) The compliance history shall include a listing of all adjudicated decisions and compliance proceedings, as defined in §116.11 of this title (relating to Compliance History Definitions), involving the facility that is the subject of the permit application.

(b) If the applicant has no compliance history in the United States, then the applicant shall provide the Texas Natural Resource Conservation Commission (TNRCC or commission) with a compliance history for any similar facilities owned or operated by:

(1) a person who is presently an officer, director, or agent of the applicant;

(2) a parent corporation, subsidiary, or predecessor in interest of the applicant;

(3) one who owns 20% or more of the applicant, whether directly, as a shareholder, partner, beneficiary, or otherwise; or

(4) one who controls the applicant or has the ability to direct the conduct of the applicant.

(c) The compliance history shall include the following compliance events and associated information:

(1) for Texas facilities:

(A) criminal convictions known to the TNRCC and civil orders, judgments, and decrees identified by stating:

(i) the style of the case;

(ii) the tribunal issuing the conviction or judgment;

(iii) the docket number and the date of action; and

(iv) the general nature of the alleged violation;

(B) administrative enforcement orders identified by stating:

(i) the name or style of action;

(ii) the agency issuing the order;

(iii) the docket number and the date of the order; and

(iv) the general nature of the alleged violation;

(C) compliance proceedings identified by stating:

(i) the name or style of action; and

(ii) the general nature of the alleged violation;

(2) for United States facilities outside Texas:

(A) criminal convictions and civil judgments identified by stating:

(i) the style of the case;

(ii) the tribunal issuing the conviction or judgment;

(iii) the docket number and date of action; and

(iv) the general nature of the alleged violation;

(B) administrative enforcement orders identified by stating:

(i) the name or style of action;

(ii) the agency issuing the order;

(iii) the docket number and the date of the order; and

(iv) the general nature of the alleged violation;

(C) for notices of violation issued by the United States Environmental Protection Agency (EPA):

(i) the name of the action;

(ii) the EPA identification number and date of notice; and

(iii) the general nature of the alleged violation.

(d) In compiling the applicant's compliance history pursuant to subsection (c) of this section, the TNRCC shall not include violations of fugitive emission monitoring and recordkeeping requirements imposed either by §101.20(1) and (2) of this title (relating to Compliance with EPA Standards), or State Implementation Plan requirements applicable to major sources in nonattainment areas where:

(1) violations occurring after the effective date of this rule have been the subject of a TNRCC administrative enforcement action and the Commission classified those violations as not being subject to compliance history review; or

(2) violations occurring during five years preceding the effective date of this rule that have been the subject of TNRCC administrative enforcement action in which:

(A) the TNRCC did not classify those violations as either major seriousness or major impact for the purpose of administrative review; and

(B) the commission assessed a total administrative penalty of less than $20,000 for any of those violations.

(e) The TNRCC may request an analysis of the significance of any of the compliance events identified in the compliance history and their relevance to the facility that is the subject of the application. The TNRCC request shall list specific compliance events requiring such an analysis.

Adopted August 16, 1993 Effective September 13, 1993

§116.123. Effective Dates.

The requirements under this undesignated head (concerning Compliance History) apply only to applications filed on or after December 9, 1992. For applications filed before June 1, 1993, neither the Texas Natural Resource Conservation Commission (TNRCC) nor the applicant is required to include compliance events occurring before June 1, 1988. For applications filed on or after June 1, 1993, neither the TNRCC nor the applicant is required to include compliance events occurring more than five years prior to the date on which the application is filed.

Adopted August 16, 1993 Effective September 13, 1993

§116.124. Public Notice of Compliance History.

When public notice is required pursuant to §116.131 of this title (relating to Public Notification Requirements), the applicant shall include the following statement in the notice: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Natural Resource Conservation Commission."

Adopted August 16, 1993 Effective September 13, 1993

§116.125. Preservation of Existing Rights and Procedures.

Nothing in this subchapter (relating to New Source Review Permits) shall diminish the rights of any party in a contested case hearing to raise any issue authorized by the Texas Health and Safety Code, §382.0518(c), nor diminish the rights of any person to request and obtain compliance history information from the Texas Natural Resource Conservation Commission (TNRCC or commission). Nothing in this subchapter shall limit the authority of the Commission to request and consider any other information that is relevant to the application under the law. Nothing in this subchapter shall create any right in third parties which did not exist before the effective date of this subchapter.

Adopted August 16, 1993 Effective September 13, 1993

§116.126. Voidance of Permit Applications.

If an applicant does not submit compliance history information within 180 days, upon written request, the Texas Natural Resource Conservation Commission (TNRCC) will void the permit application. The applicant will also forfeit the fees associated with the permit application. A new permit application shall be required for further consideration by the TNRCC.

Adopted August 16, 1993

Effective September 13, 1993

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

PUBLIC NOTIFICATION AND COMMENT PROCEDURES

§116.130. Applicability.

(a) Any person who applies for a new permit shall be required to publish notice of intent to construct a new facility or modify an existing facility in a newspaper in general circulation in the municipality where the facility is located. Any person who applies for a permit amendment shall provide public notification as required by the executive director.

(b) Upon written request by the owner or operator of a facility which previously has received a permit or special permit from the Texas Natural Resource Conservation Commission, the executive director, or designated representative may exempt the relocation of such facility from the requirements of this section if there is no indication that operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution.

Adopted August 16, 1993 Effective September 13, 1993

§116.131. Public Notification Requirements.

(a) Notification by applicant. If the application is complete, for any permit subject to the Federal Clean Air Act (FCAA), Title I Part C or D or to Title 40 Code of Federal Regulations (CFR), Part 51.165(b), the executive director shall state a preliminary determination to issue or deny the permit and require the applicant to conduct public notice of the proposed construction. If an application is received for a permit not subject to the FCAA, Part C or D or to 40 CFR 51.165(b), the executive director shall require the applicant to conduct public notice of the proposed construction. In all cases, public notice shall include the information specified in §116.132 of this title (relating to Public Notice Format) and the applicant shall provide such notice using each of the methods specified in §116.132 of this title. The executive director may specify that additional information needed to satisfy public notice requirements of 40 CFR §52.21 also be included in the notice published pursuant to §116.132 of this title.

(b) Availability of application for review. The executive director shall make the completed application (except sections relating to confidential information) and the preliminary analyses of the application completed prior to publication of the public notice available for public inspection during normal business hours at the Texas Natural Resource Conservation Commission (TNRCC) Austin office and at the appropriate TNRCC regional office in the region where construction is proposed throughout the comment period established in the notice published pursuant to §116.132 of this title.

Adopted 08/16/93 Effective 09/13/93

§116.132. Public Notice Format.

(a) Publication in public notices section of newspaper. At the applicant's expense, notice of intent to obtain a permit to construct a facility, modify an existing facility, or to seek permit renewal review shall be published in the public notice section of two successive issues of a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located, or in the municipality nearest to the location or proposed location of the facility. The notice shall contain the following information:

(1) permit application number;

(2) company name;

(3) type of facility;

(4) description of the location of facility or proposed location of the facility;

(5) contaminants to be emitted;

(6) preliminary determination of the executive director to issue or not issue the permit (for permits subject to the Federal Clean Air Act, Title I Part C or D or to 40 CFR 51.165(b));

(7) location and availability of copies of the completed permit application and the Texas Natural Resource Conservation Commission's (TNRCC) preliminary analyses;

(8) public comment period;

(9) procedure for submission of public comments concerning the proposed construction;

(10) notification that a person who may be affected by emission of air contaminants from the facility is entitled to request a hearing in accordance with TNRCC rules; and

(11) name, address, and phone number of the regional TNRCC office to be contacted for further information.

(b) Publication elsewhere in the newspaper. Another notice with a size of at least 96.8 square centimeters (15 square inches) and whose shortest dimension is at least 7.6 centimeters (three inches) shall be published in a prominent location elsewhere in the same issue of the newspaper and shall contain the information specified in subsection (a)(1)-(4) of this section and note that additional information is contained in the notice published pursuant to subsection (a) of this section in the public notice section of the same issue.

(c) Additional alternate language public notice. The requirements of this subsection are applicable whenever either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by the Education Code, §21.109, and 19 Texas Administrative Code (TAC) §89.2(a) or if either school has waived out of such a required bilingual education program under the provisions of 19 TAC §89.2(g). Schools not governed by the provisions of 19 TAC §89.2

shall not be considered in determining applicability of the requirements of this subsection. Each affected facility shall meet the following requirements.

(1) The applicant shall publish an additional notice at least once in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school has waived out of the requirements of 19 TAC §89.2(a) under 19 TAC §89.2(g), the notice shall be published in the alternate languages in which the bilingual education program would have been taught had the school not waived out of the bilingual education program.

(2) Each notice under this subsection shall be published in a newspaper or publication that is published in the alternate language in which public notice is required.

(3) The newspaper or publication must be of general circulation in the municipality or county in which the facility is located or proposed to be located.

(4) The requirements of this subsection are waived for each language in which no publication exists, or if the publishers of all alternate language publications refuse to publish the notice.

(5) Notice under this subsection shall only be required to be published within the United States.

(6) If the alternate language publication is published once a week or more frequently, then notice shall be published in two successive issues. Otherwise, only one publication shall be required.

(7) If the alternate language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(8) Each alternate language publication shall follow the requirements of subsections (a) and (b) of this section not otherwise inconsistent with this subsection.

(d) Exemptions from alternate language notification. Elementary or middle schools that offer English as a second language under 19 TAC §89.2(d), and are not otherwise affected by 19 TAC §89.2(a), will not trigger the requirements of subsection (c) of this section.

Adopted August 2, 1994 Effective August 16, 1994

§116.133. Sign Posting Requirements.

(a) At the applicant's expense, a sign or signs shall be placed at the site of the proposed facility declaring the filing of an application for a permit and stating the manner in which the Texas Natural Resource Conservation Commission (TNRCC) may be contacted for further information. Such signs shall be provided by the applicant and shall meet the following requirements:

(1) signs shall consist of dark lettering on a white background and shall be no smaller than 18 inches by 28 inches;

(2) signs shall be headed by the words "PROPOSED AIR QUALITY PERMIT" in no less than two-inch bold face block printed capital lettering;

(3) signs shall include the words "APPLICATION NO." and the number of the permit application in no less than one-inch bold-face block printed capital lettering (more than one number may be included on the signs if the respective public comment periods coincide);

(4) signs shall include the words "for further information contact" in no less than ½-inch lettering;

(5) signs shall include the words "Texas Natural Resource Conservation Commission," and the address of the appropriate TNRCC regional office in no less than one-inch bold-face capital lettering and 3/4-inch bold-face lower case lettering; and

(6) signs shall include the phone number of the appropriate TNRCC regional office in no less than two-inch bold-face numbers.

(b) The sign or signs must be in place by the date of publication of the newspaper notice required by §116.132 of this title (relating to Public Notice Format) and must remain in place and legible throughout the period of public comment provided for in §116.136(a) of this title (relating to Public Comment Procedures).

(c) Each sign placed at the site must be located within 10 feet of each (every) property line paralleling a street or other public thoroughfare. Signs must be visible from the street and spaced at not more than 1,500 foot intervals. A minimum of one sign, but no more than three signs shall be required along any property line paralleling a public thoroughfare. The TNRCC may approve variations from these requirements if it is determined that alter- native sign posting plans proposed by the applicant are more effective in providing notice to the public.

(d) The TNRCC may approve variations from the requirements of subsection (c) of this section if the applicant has demonstrated that it is not practical to comply with the specific requirements of subsection (c) of this section and alternative sign posting plans proposed by the applicant area at least as effective in providing notice to the public. The approval from the TNRCC under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) These sign requirements do not apply to properties under the same ownership which are noncontiguous and/or separated by intervening public thoroughfares, unless directly involved by the permit application.

(f) Alternate language sign posting. The requirements of this subsection are applicable whenever either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by the Education Code, §21.109, and 19 Texas Administrative Code

(TAC) §89.2(a) or if either school has waived out of such a required bilingual program under the provisions of 19 TAC §89.2(g). Schools not governed by the provisions of 19 TAC §89.2 shall not be considered in determining applicability of the requirements of this subsection. Each affected facility shall meet the following requirements.

(1) The applicant shall post an additional sign in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school has waived out of the requirements of 19 TAC §89.2(a) under 19 TAC §89.2(g), the alternate language signs shall be posted in the alternate languages in which the bilingual education program would have been taught had the school not waived out of the bilingual education program.

(2) The alternate language signs shall be posted adjacent to each English language sign required in this section.

(3) The alternate language sign posting requirements of this subsection shall be satisfied without regard to whether alternate language notice is required under §116.132(c) of this title (relating to Public Notice Format).

(4) The alternate language signs shall meet all other requirements of this section.

(g) Exemption from alternate language sign posting. Elementary or middle schools that offer English as a second language under 19 TAC §89.2(d), and are not otherwise affected by 19 TAC §89.2(a), will not trigger the requirements of subsection (f) of this section.

Adopted August 2, 1994 Effective August 16, 1994

§116.134. Notification of Affected Agencies.

When newspaper notices are published in accordance with §116.132 of this title (relating to Public Notice Format), the permit applicant shall furnish a copy of such notices and date of publication to the Texas Natural Resource Conservation Commission (TNRCC) in Austin; the United States Environmental Protection Agency Regional Administrator in Dallas; all local air pollution control agencies with jurisdiction in the county in which the construction is to occur; and the air pollution control agency of any nearby state in which air quality may be adversely affected by the emissions from the new or modified facility. Along with such notices furnished to the TNRCC, the permit applicant shall certify that the signs required by §116.133 of this title (relating to Sign Posting Requirements) have been posted in accordance with the provision of that section.

Adopted August 16, 1993 Effective September 13, 1993

§116.136. Public Comment Procedures.

(a) Comment period. Interested persons may submit written comments, including requests for public hearings pursuant to Texas Clean Air Act, §382.056, on the permit application and on the executive

director's preliminary decision to issue or not to issue the permit. The public comment and timely hearing requests shall be processed under Chapter 55, Subchapter B of this title (relating to Hearing Requests, Public Comment).

(b) Consideration of comments. All written comments received by the executive director during the period specified in subsection (a) of this section shall be considered in determining whether to issue or not to issue the permit. The executive director shall make record of all comments received together with the agency analysis of such comments available for public inspection during normal business hours at the Austin office of the commission and appropriate regional office.

Adopted April 16, 1997 Effective May 15, 1997

§116.137. Notification of Final Action by the Texas Natural Resource Conservation Commission.

(a) Notification of applicant. Within 180 days of receipt of a completed application, the Executive director shall notify the permit applicant of the final decision to grant or deny the permit, provided:

(1) no requests for public hearing or public meeting on the proposed facility have been received;

(2) the applicant has satisfied all public notification requirements of this section; and

(3) the federal regulations for Prevention of Significant Deterioration of Air Quality and nonattainment review do not apply.

(b) Notification of commenters. Persons submitting written comments in accordance with §116.136(a) of this title (relating to Public Comment Procedures) or persons submitting a written request to be notified of the final agency action within the comment period specified in §116.136(a) of this title will be notified of the executive director's final decision at the same time that the applicant is notified.

Adopted August 16, 1993 Effective September 13, 1993

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

PERMIT FEES

§116.140. Applicability.

Any person who applies for a permit to construct a new facility or to modify an existing facility, or for an amendment to an existing permit pursuant to §116.110 of this title (relating to Applicability) shall remit, at the time of application for such permit, a fee based on the estimated capital cost of the project. The fee will be determined as set forth in §116.141 of this title (relating to Determination of Fees). Fees will not be charged for operating permits, permit alterations, amendments to special permits, standard exemptions, site approvals for permitted portable facilities, changes of ownership, or changes of location of permitted facilities.

Adopted August 16, 1993 Effective September 13, 1993

§116.141. Determination of Fees.

(a) The estimated capital cost of the project is the estimated total cost of the equipment and services that would normally be capitalized according to standard and generally accepted corporate financing and accounting procedures.

(b) The following fee schedule may be used by a permit applicant to determine the fee to be remitted with a permit application.

(1) If the estimated capital cost of the project is less than $300,000 or if the project consists of new facilities controlled and operated directly by the federal government for which an application is submitted after January 1, 1987, and the federal regulations for Prevention of Significant Deterioration (PSD) Review do not apply, the fee is $450. The provisions of subsections (c) and (d) of this section do not apply to a project consisting of new facilities controlled and operated directly by the federal government.

(2) If the estimated capital cost of the project is $300,000 or more and the PSD regulations do not apply, the fee is 0.15% of the estimated capital cost of the project. The maximum fee is $75,000. For determination of fees for projects applicable to PSD regulations, see §116.163 of this title (relating to Prevention of Significant Deterioration Permit Fees).

(c) If the estimated capital cost of the project is less than $50 million, the permit applicant shall include a certification that the estimated capital cost of the project is correct. Certification of the estimated capital cost of the project may be spot checked and evaluated for reasonableness during permit processing. The reasonableness of project capital cost estimates used as a basis for permit fees shall be determined by the extent to which such estimates include fair and reasonable estimates of the capital value of the direct and indirect costs listed as follows.

(1) Direct costs are as follows:

(A) process and control equipment not previously owned by the applicant and permitted in Texas;

(B) auxiliary equipment, including exhaust hoods, ducting, fans, pumps, piping, conveyors, stacks, storage tanks, waste-disposal facilities, and air pollution control equipment specifically needed to meet permit and regulation requirements;

(C) freight charges;

(D) site preparation (including demolition), construction of fences, outdoor lighting, road, and parking areas;

(E) installation (including foundations), erection of supporting structures, enclosures or weather protection, insulation and painting, utilities and connections, process integration, and process control equipment;

(F) auxiliary buildings, including materials storage, employee facilities, and changes to existing structures;

(G) ambient air monitoring network.

(2) Indirect costs are as follows:

(A) final engineering design and supervision, and administrative overhead;

(B) construction expense (including construction liaison), securing local building permits, insurance, temporary construction facilities, and construction clean-up;

(C) contractor's fee and overhead.

(d) A fee of $75,000 shall be required if no estimate of capital project cost is included with a permit application.

(e) An applicant for a permit or permit amendment not involving any capital expenditure shall be required to remit the minimum permit fee of $450.

Adopted August 16, 1993 Effective September 13, 1993

§116.143. Payment of Fees.

All permit fees will be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission (TNRCC) and delivered with the application for permit or

amendment to the TNRCC, 12124 Park 35 Circle, Austin, Texas 78753. Required fees must be received before the agency will begin examination of the application.

(1) Single fee. The executive director shall charge only one fee for multiple permits issued for one project if it is determined that the following conditions are met:

(A) all the component or separate processes being permitted are integral or related to the overall project;

(B) the project is under continuous construction of the component parts;

(C) the permitted facilities are to be located on the same or contiguous property; and

(D) applications for all permits for the project must be submitted at the same time.

(2) Return of fees. Fees must be paid at the time an application for a permit or amendment is submitted. If no permit or amendment is issued by the agency or if the applicant withdraws the application prior to issuance of the permit or amendment, one-half of the fee will be refunded except that the entire fee will be refunded for any such application for which a standard exemption is allowed. No fees will be refunded after a deficient application has been voided or after a permit or amendment has been issued by the agency.

Adopted August 16, 1993 Effective September 13, 1993

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

NONATTAINMENT REVIEW

§116.150. New Major Source or Major Modification in Ozone Nonattainment Area.

(a) This section applies to administratively complete applications received on or after November 15, 1992. Applications filed before November 15, 1992, shall be reviewed using the procedures outlined in this chapter in effect on October 22, 1991. The owner or operator of a proposed new facility which is a major stationary source of volatile organic compound (VOC) emissions or nitrogen oxides (NO_x) emissions, or which is a facility that will undergo a major modification with respect to VOC or NO_x emissions, and which is to be located in any area designated as nonattainment for ozone in accordance with the Federal Clean Air Act (FCAA), §107 shall meet the additional requirements of paragraphs (1)-(4) of this subsection, except as provided for in subsections (b) and (c) of this section. Table I of §116.12 of this title (relating to Nonattainment Review Definitions) specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications. The de minimis threshold test shall be required for proposed VOC emissions increases that equal or exceed five tons per year in moderate, serious, and severe ozone nonattainment areas, and for NO_x emissions increases that equal or exceed forty tons per year in moderate, serious, and severe ozone nonattainment areas. In applying the de minimis threshold test, if the net emissions increases aggregated over the contemporaneous period are greater than the major modification levels stated in Table I, then the following requirements apply.

(1) The proposed facility shall comply with the lowest achievable emissions rate (LAER) as defined in §116.12 of this title for the nonattaining pollutant for which the facility is a new major source or major modification. LAER shall be applied to each new emissions unit and to each existing emissions unit at which a net emissions increase will occur as a result of a physical change or change in the method of operation of the emissions unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state shall be in compliance or on a schedule for compliance with all applicable state and federal emission limitations and standards.

(3) At the time the new or modified facility or facilities commence operation, the emissions increases from the new or modified facility or facilities shall be offset. The proposed facility shall use the offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title and shown in Table I of §116.12 of this title.

(4) In accordance with the FCAA, the permit application shall contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis shall demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

(b) For sources located in the Dallas/Fort Worth ozone nonattainment area (Collin, Dallas, Denton, and Tarrant counties) or the El Paso ozone nonattainment area (El Paso County), the requirements of this section do not apply to NO_x emissions.

(c) For sources located in the Houston/Galveston (HGA) ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties) or the Beaumont/Port Arthur (BPA) ozone nonattainment area (Hardin, Jefferson, and Orange counties), the following shall apply to NO_x emissions:

(1) For permit applications in review after April 12, 1995, and declared administratively complete on or before December 31, 1997:

(A) Subsections (a)(1), (2), and (4) of this section do not apply.

(B) The requirements of subsection (a)(3) of this section apply and shall be made a part of the source's permit. However, the requirements shall be held in abeyance for a period ending no sooner than January 1, 1998. The Texas Natural Resource Conservation Commission (commission) may, on or after January 1, 1998, and after making the determinations described in paragraph (2) of this subsection, require the source to implement the permit requirements imposed pursuant to the requirements of subsection (a)(3) of this section. If the commission requires implementation, the source shall obtain the NO_x offsets as specified in subsection (a)(3) of this section no later than January 1, 2000.

(C) Documentation of proposed increases of NO_x equal to or greater than 40 tons per year, as well as documentation of netting calculations for these increases, shall be submitted.

(D) A source otherwise subject to the requirements of subsection (a)(1)-(4) of this section may, at its option, comply with any of those requirements.

(2) The commission will review, during the years 1996 and 1997, the results of the Urban Airshed Model for the HGA and BPA ozone nonattainment areas, using data from the Coastal Oxidant Assessment for Southeast Texas study, in accordance with the United States Environmental Protection Agency document "Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f)" (December 1993). If the commission determines that additional NO_x reductions in the nonattainment area would contribute to attainment of the National Ambient Air Quality Standards for ozone in that nonattainment area, the commission will notify sources which have permit requirements in abeyance pursuant to paragraph (1)(B) of this subsection, that the period of abeyance shall end. The source shall obtain the NO_x offsets as specified in subsection (a)(3) of this section no later than January 1, 2000. On or after January 1, 1998, the commission, pursuant to a formal rulemaking proceeding, may require sources in the HGA and BPA nonattainment areas who file an application after January 1, 1998, to comply with the requirements of subsection (a)(1) - (4) of this section.

§116.151. New Major Source or Major Modification in Nonattainment Area Other than Ozone.

This section applies to administratively complete applications received on or after November 15, 1992. Applications filed before November 15, 1992, shall be reviewed using the procedures outlined in this chapter in effect on October 22, 1991. The owner or operator of a proposed facility in a designated nonattainment area for an air contaminant other than ozone, which will be a new major stationary source or a major modification for that nonattainment air contaminant, must meet the additional requirements of paragraphs (1)-(4) of this section regardless of the degree of impact of its emissions on ambient air quality. Table I of §116.12 of this title (relating to Nonattainment Review Definitions), specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications.

(1) The proposed facility shall comply with the lowest achievable emission rate (LAER) as defined in §116.12 of this title for the nonattaining pollutants for which the facility is a new major source or major modification. LAER shall be applied to each new emissions unit and to each existing emissions unit at which a net emissions increase will occur as a result of a physical change or change in the method of operation of the emissions unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state shall be in compliance or on a schedule for compliance with all applicable state and federal emission limitations and standards.

(3) At the time the new or modified facility or facilities commence operation, the emissions increases from the new or modified facility or facilities shall be offset. The proposed facility shall use the offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title and shown in Table I of §116.12 of this title.

(4) In accordance with the Federal Clean Air Act, the permit application shall contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis shall demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

Adopted August 16, 1993 Effective September 13, 1993

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

§116.160. Prevention of Significant Deterioration Requirements.

(a) Each proposed new major source or major modification in an attainment or unclassifiable area shall comply with the Prevention of Significant Deterioration (PSD) of Air Quality regulations promulgated by the United States Environmental Protection Agency (EPA) in Title 40 Code of Federal Regulations (CFR) at 40 CFR 52.21 as amended June 3, 1993 (effective June 3, 1994) and the Definitions for Protection of Visibility promulgated at 40 CFR 51.301, hereby incorporated by reference.

(b) The following paragraphs are excluded:

(1) 40 CFR 52.21(j), concerning control technology review;

(2) 40 CFR 52.21(l), concerning air quality models;

(3) 40 CFR 52.21(q), concerning public notification (provided, however, that a determination to issue or not issue a permit shall be made within one year after receipt of a complete permit application so long as a contested case hearing has not been called on the application);

(4) 40 CFR 52.21(r)(2), concerning source obligation;

(5) 40 CFR 52.21(s), concerning environmental impact statements;

(6) 40 CFR 52.21(u), concerning delegation of authority; and

(7) 40 CFR 52.21(w), concerning permit rescission.

(c) The term "executive director" shall replace the word "administrator," except in 40 CFR 52.21(b)(17), (f)(1)(v), (f)(3), (f)(4)(i), (g), and (t). "Administrator or executive director" shall replace "administrator" in 40 CFR 52.21(b)(3)(iii), and "administrator and executive director" shall replace "administrator" in 40 CFR 52.21(p)(2).

(d) All estimates of ambient concentrations required under this subsection shall be based on the applicable air quality models and modeling procedures specified in the EPA Guideline on Air Quality Models, as amended, or models and modeling procedures currently approved by EPA for use in the state program, and other specific provisions made in the PSD State Implementation Plan. If the air quality impact model approved by EPA or specified in the guideline is inappropriate, the model may be modified or another

model substituted on a case-by-case basis, or a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval of the administrator of the EPA.

Adopted March 1, 1995 Effective April 5, 1995

§116.161. Source Located in an Attainment Area with a Greater than De Minimis Impact.

The Texas Natural Resource Conservation Commission may not issue a permit to any new major stationary source or major modification located in an area designated as attainment or unclassifiable, for any National Ambient Air Quality Standard (NAAQS) pursuant to the Federal Clean Air Act, §107, if ambient air impacts from the proposed source would cause or contribute to a violation of any NAAQS. In order to obtain a permit, the source must reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to eliminate the predicted exceedances of the NAAQS. A major source or major modification will be considered to cause or contribute to a violation of an NAAQS when the emissions from such source or modification would, at a minimum, exceed the de minimis impact levels specified in §116.10 of this title (relating to General Definitions) at any locality that is designated as nonattainment or is predicted to be nonattainment for the applicable standard.

Adopted August 16, 1993 Effective September 13, 1993

§116.162. Evaluation of Air Quality Impacts.

In evaluating air quality impacts under §116.160 of this title (relating to Prevention of Significant Deterioration Requirements) or §116.161 of this title (relating to Sources located in an Attainment Area with a Greater than De Minimis Impact), the owner or operator of a proposed new facility or modification of an existing facility shall not take credit for reductions in impact due to dispersion techniques as defined in Title 40 Code of Federal Regulations (CFR). The relevant federal regulations are incorporated herein by reference, as follows:

(1) 40 CFR 51.100(hh)-(kk) promulgated November 7, 1986;

(2) the definitions of owner or operator, emission limitation and emission standards, stack, a stack in existence, and reconstruction, as given under 40 CFR 51.100(f), (z), (ff), (gg), and 40 CFR 60, respectively;

(3) 40 CFR 51.118(a), (b), and (c); and

(4) 40 CFR 51.164.

Adopted August 16, 1993 Effective September 13, 1993

§116.163. Prevention of Significant Deterioration Permit Fees.

(a) If the estimated capital cost of the project is less than $300,000 or if the project consists of new facilities controlled and operated directly by the federal government for which an application is submitted after January 1, 1987, and the federal regulations for Prevention of Significant Deterioration (PSD) of Air Quality are applicable, the fee is $1,500.

(b) If the estimated capital cost of the project is $300,000 or more and the PSD regulations are applicable, the fee is 0.5% of the estimated capital cost of the project. The maximum fee is $75,000.

(c) Whenever a permit application is submitted under PSD requirements, there shall be no additional fee for the state new source review permit application.

(d) Certification of the estimated capital cost of the project shall be provided in accordance with §116.141(c) and (d) of this title (relating to Determination of Fees).

(e) A fee of $75,000 shall be required if no estimate of capital project cost is included with a permit application.

Adopted August 16, 1993 Effective September 13, 1993

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

EMISSION REDUCTIONS: OFFSETS

§116.170. Applicability for Reduction Credits.

At the time of application for a permit in accordance with this chapter, any applicant who has effected air contaminant emission reductions may also apply to the executive director to use such emission reductions to offset emissions expected from the facility for which the permit is sought, provided that the following conditions are met.

(1) The emission reductions are not required by any provision of the Texas State Implementation Plan as promulgated by the United States Environmental Protection Agency in 40 Code of Federal Regulations, Part 52, Subpart SS, nor by any other federal regulation under the Federal Clean Air Act, as amended, such as New Source Performance Standards. Minimum offset ratios as specified in Table I of §116.12 of this title (relating to Nonattainment Review Definitions) shall be used in areas designated as nonattainment areas.

(2) The applicant furnished documentation at the time of his permit application to substantiate his claim of emission reductions previously effected. The following information must be included in the documentation:

(A) location and identity of the source(s) where emissions are reduced;

(B) chemical composition of emissions reduced;

(C) date(s) when emission reductions occurred;

(D) amount of emission reductions expressed in rates of tons per year and in pounds per hour;

(E) a complete description of the reduction method (i.e., source shut-down, process or operational change, type of control device, etc.);

(F) a certification by the applicant that the emission reductions have in fact been achieved and that the same reductions have not been used previously and will not be used subsequently to offset another source; and

(G) any other pertinent detailed descriptive information that may be requested by the executive director.

(3) Emissions increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source, shall be allowed to be offset by alternative or innovative means, provided the following conditions are met:

(A) any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source permitted to test such engines as of November 15, 1990;

(B) the source demonstrates to the satisfaction of the Texas Natural Resource Conservation Commission (TNRCC) that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source;

(C) the source has obtained a written finding from the Department of Defense, Department of Transportation, National Aeronautics and Space Administration, or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security; and

(D) the source will comply with an alternative measure, imposed by the TNRCC, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the TNRCC may impose an emissions fee to be paid which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous three years.

Adopted August 16, 1993 Effective September 13, 1993

§116.174. Determination by Executive Director to Authorize Reductions.

The executive director may grant authority to a permit applicant to use prior emission reductions and emission reductions granted to the applicant by another entity (either public or private) in accordance with §116.170 of this title (relating to Applicability of Reduction Credits) if the Texas Natural Resource Conservation Commission determines that the prior emission reductions have, in fact occurred, and when considered with other emission reductions that may be required by the permit as well as contaminants that will be emitted by the new source, will result in compliance with §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Area), §116.151 of this title (relating to New Major Source or Major Modification in Nonattainment Area Other than Ozone), §116.160 of this title (relating to Prevention of Significant Deterioration Requirements), and §116.162 of this title (relating to Evaluation of Air Quality Impacts), as applicable, in the area where the new source is to be located. Prior as well as future emission reductions to be used as an offset shall be made conditions for granting authority to construct the proposed new source and shall be enforced.

Adopted August 16, 1993 Effective September 13, 1993

§116.175. Recordkeeping.

The executive director will maintain no records of emission offset credits claimed by an applicant in accordance with §116.170 of this title (relating to Applicability of Reduction Credits) other than those contained in permit application and permit files. The applicant shall maintain all records necessary to substantiate claims of emission reductions and shall make such records available for inspection upon request of the executive director.

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